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6 Attorneys for Defendant  
 7 RITE AID CORPORATION

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10 KIMBERLY BEAGLE,  
 11 Plaintiff,  
 12 vs.  
 13 RITE AID CORPORATION; and DOES  
 14 1 TO 100, INCLUSIVE,  
 15 Defendants.

1 Case No.: CV08-1517-PJH

2 **[PROPOSED] ORDER GRANTING**  
 3 **DEFENDANT RITE AID'S MOTION**  
 4 **TO DISMISS FOR LACK OF**  
 5 **SUBJECT MATTER JURISDICTION**  
 6 **(FRCP 12(b)(1))**

7 Date: Wednesday, June 4, 2008

8 Time: 9:00 a.m.

9 Dept.: Courtroom 3, 17<sup>th</sup> Floor

10  
 11 On June 4, 2008, the motion of Defendant Rite Aid Corporation ("Rite  
 12 Aid") to dismiss the disability harassment cause of action (the Second Cause of  
 13 Action) in the complaint filed by Plaintiff Kimberly Beagle ("Plaintiff") came on  
 14 regularly for hearing before the Honorable Phyllis A. Hamilton. David D.  
 15 Cheng, Esq. appeared on behalf of Plaintiff. Annmarie M. Liermann, Esq. of  
 16 Kelly, Hockel & Klein, P.C. appeared on behalf of Defendant.

17 The Court having considered the papers filed in support of and in  
 18 opposition to the motion, the arguments of counsel at the hearing on the  
 19 motion, and the pleadings on file in this action, and GOOD CAUSE APPEARING  
 20 THEREFOR, makes the following order:

1       Defendant's motion to dismiss Plaintiff's disability harassment claim (the  
2 Second Cause of Action) is hereby GRANTED. The Court lacks jurisdiction over  
3 the disability harassment cause of action because Plaintiff failed to exhaust her  
4 administrative remedies as to that claim.

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6       IT IS SO ORDERED.

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8       DATED:

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10       \_\_\_\_\_  
11       Judge Phyllis A. Hamilton  
12       Judge of the United States District Court,  
13       Northern District of California  
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PROOF OF SERVICE

2 *Kimberly Beagle v. Rite Aid Corporation, and DOES 1 to 100, inclusive*  
 3 USDC Northern District Case No.: CV08-1517-PJH

4 I, MARIA E. JAIME, declare:

5 I am employed in the City and County of San Francisco, State of California. My business address is  
 6 44 Montgomery Street, Suite 2500, San Francisco, California 94104. I am over the age of 18 years and not a  
 party to the foregoing action.

7 On *April 24, 2008*, I served the following Document: **[PROPOSED] ORDER GRANTING MOTION  
 TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION (FRCP 12(b)(1)** on the  
 8 interested parties in said action,

9	Mark S. Adams, Esq.	(209) 477-3833
10	David D. Cheng, Esq.	
11	Mayall, Hurley, Knutsen, Smith & Green	
12	2453 Grand Canal Blvd., Second floor Stockton, CA 95207-8253 <i>Attorneys for Plaintiff</i>	

13  **(by mail)** by placing a true copy thereof enclosed in a sealed envelope in a designated area for  
 14 outgoing mail, addressed as set forth above. At Kelly, Herlihy & Klein LLP, mail placed in that  
 15 designated area is given the correct amount of postage and is deposited that same day, in the ordinary  
 course of business, in a United States mailbox in the City of San Francisco, California.

16  **(by personal delivery)** by having a true copy thereof personally delivered to the person listed above  
 17 by a non-interested party employed by the law firm of Kelly, Herlihy & Klein LLP.

18  **(by Federal Express)** by depositing a true copy thereof in a sealed packet for overnight delivery, with  
 19 charges thereon fully prepaid, in a Federal Express collection box, at San Francisco, California, and  
 addressed as set forth above.

20  **(by facsimile transmission as indicated above)** by transmitting said document(s) from our office  
 21 facsimile machine (415) 391-7808, to facsimile machine number(s) shown above. Following  
 22 transmission, I received a "Transmission Report" from our fax machine indicating that the  
 transmission had been transmitted without error.

23 I declare under penalty of perjury and the laws of the United States that the foregoing is true  
 and correct and that this declaration was executed on *April 24, 2008* at San Francisco, California.

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 25  
 26 MARIA E. JAIME  
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